

REGORDATION NO. 8149 *P* Filed & Recorded

DEC 22 1975 -1 05 PM

INTERSTATE COMMERCE COMMISSION

---

SUBLEASE OF RAILROAD EQUIPMENT

Dated as of October 31, 1975

between

PLM-LOUISVILLE, INC.

and

LOUISVILLE GAS AND ELECTRIC COMPANY

---

SUBLEASE OF RAILROAD EQUIPMENT dated as of October 31, 1975 (hereinafter called this Lease), between PLM-LOUISVILLE, INC., a California corporation (hereinafter called the Lessor), and LOUISVILLE GAS AND ELECTRIC COMPANY, a Kentucky corporation (hereinafter called the Lessee).

WHEREAS Continental Illinois National Bank and Trust Company of Chicago (hereinafter called the Vendee), not in its individual capacity but solely as Trustee under a Trust Agreement dated as of the date hereof with International Paper Equipment Leasing Corporation (hereinafter called the Beneficiary), and Pullman Incorporated (Pullman Standard Division) (hereinafter called the Builder) are entering into a Conditional Sale Agreement dated the date hereof (hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Vendee the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS, pursuant to an Agreement and Assignment dated as of the date hereof, the Builder is assigning its interests in the Security Documentation to Continental Illinois National Bank and Trust Company of Chicago, not in its individual capacity but solely as Agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) (said Bank, as so acting, being hereinafter together with its successors and assigns called the Vendor); and

WHEREAS the Lessor is entering into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Original Lease), to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) from the Vendee, and the Lessor desires to sublease the Units to the Lessee at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor

hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, including the Lessee's right by subrogation thereunder, or the Builder or the Vendor or the Vendee or PLM or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Original Lease. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and

if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Vendee a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, (i) one payment on the Closing Date (as defined in Article 4 of the Security Documentation), and (ii) 180 monthly rental payments on the 15th day of each calendar month commencing January 15, 1976, to and including December 15, 1990. The rental payment payable on the Closing Date shall be in an amount equal to 0.0333% of the Purchase Price (as defined in Article 4 of the Security Documentation) of each Unit subject to this Lease for each day which will elapse from and including the Closing Date to January 15, 1976. The remaining 180 rental payments each shall be in an amount equal to 1.0% of the Purchase Price of each Unit then subject to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 9 and § 16 hereof.

If any of the monthly rental payment dates referred to above is not a business day the monthly rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in

§ 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Vendee under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation, the Original Lease or this Lease shall have occurred and be continuing, to pay the balance in accordance with the provisions of the second paragraph of Paragraph 9 of the Participation Agreement. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate 30 days after the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation and the Vendee under the Original Lease. If an Event of Default should occur under Section 10 of the Original Lease (subject to the Lessor's right to cure a default as set forth in Article 15(e) of the Security Documentation), the participation of the Lessor under this Lease shall, without the consent of the Lessor and immediately and automatically and without any further action, be terminated, and the Vendee without its further consent and immediately and automatically and without any further action shall become the lessor under this Lease; and the Lessor hereby agrees and acknowledges that in such event it shall no longer be a party to this Lease and that it would no longer have any claim whatsoever to any rental payments paid to the Vendor pursuant to § 3 hereof subsequent to such event.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there

listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendee's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease, of the Vendee under the Original Lease and of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor, the Vendee and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease, the Original Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor, the Vendee and the Lessor an opinion of counsel to that effect. The Units may be lettered with the names or initials or other insignia customarily used by the Sublessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder and by the Lessor under the Original Lease will be free of net expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Vendee) to the Lessor for collection or other charges and will be free of net expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor) to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor or the Vendee in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts,

up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Lessor or the Vendee, as the case may be, has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or the Original Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Original Lease or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its leasehold interest in the Units or upon the Vendee solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title or the interest of the Lessor or the Vendee or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendee or the Lessor, adversely affect the title, property or rights of the Vendee or the Lessor hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Vendee and the Lessor notice of such contest within 30 days after institution thereof and the Lessor and the Vendee agree to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor or the Vendee directly and paid by the Lessor or the Vendee, the Lessee shall reimburse the Lessor or the Vendee, as the case may be, on presentation of an invoice therefor.

In the event that the Vendee shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6,

the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Vendee to fulfill completely its obligations pursuant to said provision. In the event that the Lessor shall become obligated to make any payment to the Vendee or perform any act pursuant to any correlative provision of the Original Lease not covered by this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor or perform any act as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor, the Vendee and the Vendor in such Units; provided, however, that the Vendee or the Lessor, as the case may be, shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales, use or other taxes and fees and charges on the earnings or gross receipts of the Vendee or the Lessor, as the case may be, arising from the Units, or the value added by the Vendee or the Lessor, as the case may be, thereto, and remit the amount thereof and the Lessee shall reimburse the Vendee or the Lessor, as the case may be, promptly upon demand for the amount of such taxes, fees and charges.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor and the Vendee, as the case may be, hereby authorizes the Lessee to act in their respective names its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Vendee, as the case may be, harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by



the Lessor or the Vendee, submit to the Lessor or the Vendee, as the case may be, copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor or the Vendee, as the case may be, of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Vendee reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, reasonable wear and tear excepted.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee or the Vendee, irreparably damaged from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor, the Vendee and the Vendor with respect thereto. On the January 15 or July 15 next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the Schedule B hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Vendee.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date for the original term of this Lease; the Casualty Value of each Unit as of any such payment date during any extended term of this Lease shall be calculated in accordance with the provisions of § 13 hereof.

Whenever any Unit shall suffer a Casualty Occurrence after termination of the original or any extended term of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendee with respect thereto and pay to the Vendee an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Vendee shall be entitled to recover possession of such Unit. The Vendee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Vendee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Vendee.

In the event of the requisition for use by the United States Government or any agency thereof (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof for a stated period not in excess of the then remaining term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Vendee pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or

retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Vendee.

In the event that the Lessee shall in good faith reasonably determine that the Units have become economically obsolete in the Lessee's business during the original term of this Lease, the Lessee shall have the right at its option, on at least 60 days' prior written notice to the Lessor and the Vendee, to terminate (subject to the provisions for the survival of obligations contained herein) this Lease in respect of any or all Units then covered by this Lease on the January 15 or July 15, next succeeding the expiration of such notice period (for the purpose of this § 7 called the "termination date"); provided, however, that (i) the termination date shall be not earlier than January 15, 1983, (ii) no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing, (iii) on the termination date such Units shall be in the same condition as if being redelivered pursuant to § 14 hereof, and (iv) the Lessee shall have delivered to the Lessor and the Vendee a certificate signed by its Chairman of the Board, its President or one of its Vice Presidents to the effect that such Units are economically obsolete in the Lessee's business. During the period from the giving of such notice until the fifth business day preceding the termination date, the Lessee shall use its best efforts to obtain bids for the purchase of such Units, and the Lessee shall at least 5 business days prior to such termination date certify to the Lessor and the Vendee the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units) submitting such bid. On or before the termination date the Vendee shall, subject to the Lessee's obtaining, on behalf of the Lessor and the Vendee, any governmental consents required, sell such Units for cash to the bidder who shall have submitted the highest bid prior to the termination date. The total sales price realized at such sale shall be paid to the Vendee in immediately available funds on the termination date and, in addition, on the termination date the Lessee shall pay to the Vendee the excess, if any, of the Termination Value (as hereinafter

defined) in respect of such Units, computed as of the termination date, over the net sales price of such Units after deducting from such sales price any and all costs and expenses whatsoever incurred by the Lessor and the Vendee in connection with such sale. If no sale shall occur on the date scheduled therefor as above provided, this Lease shall continue in full force and effect without change. In the event of such sale and the receipt by the Vendee of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the termination date but shall then terminate. The Lessor and the Vendee shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7, other than to transfer or to cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor and the Vendee as above provided all of the Vendee's right, title and interest in and to such Units. Any sale pursuant to this § 7 shall be free and clear of all of the Lessee's rights to such Units, but otherwise shall be made without warranties other than against Lessor's and Vendee's acts.

If the Lessee shall exercise its option to terminate under this § 7, the Lessor may, notwithstanding such election by the Lessee, elect to retain the Units then subject to this Lease and to credit to the Lessee an amount equal to the then fair market value of such Units, the Lessor being solely entitled to retain the whole of such credit. In the event the Lessor shall so elect to retain the Units, the Lessee shall assemble and deliver the Units to the Lessor in accordance with the provisions of § 14 hereof.

The Termination Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such rental payment date.

The Lessee will, at all times prior to the return of the Equipment to the Vendee, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or operated by it and in any event comparable to such insurance typically carried by railroad companies in respect of similar

equipment, and the benefits thereof shall be payable to the Vendor, the Vendee, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Vendee, the Lessor and the Lessee as their interests may appear. If the Lessor or the Vendee shall receive any proceeds of insurance carried by the Lessee or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor or the Vendee, as the case may be, shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Vendee. All insurance proceeds received by the Lessor or the Vendee in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor or the Vendee, as the case may be, that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before March 1 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor, the Vendor, the Vendee and the Beneficiary an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor, the Vendee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by Article 9 of the Security Documentation have been preserved or replaced. The Lessor and the Vendee shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Vendee may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO

THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN (INCLUDING LATENT DEFECTS), THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee, on the one hand, and the Lessor and the Vendee, on the other hand, that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Vendee based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, the Vendee and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit), in so far as such compliance is within the ability and control of the Lessee, with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules

of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendee, the Lessor or the Vendor, adversely affect the property or rights of the Vendee, the Lessor or the Vendor under this Lease, the Original Lease or under the Security Documentation.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Vendee, the Vendor and PLM from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default under the Security Documentation, the Participation Agreement or this Lease, the Original Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

In the event that there are any losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 8 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, the Lessee agrees that each rental payment due thereafter in respect of Units acquired after such deficiency arose shall be increased by such (adjusted to reflect the

differential in rent paid by the Lessee under this Lease and the Lessor as lessee under the Original Lease) amount as, in the reasonable opinion of the Vendee, will cause the Vendee's net return (after giving effect to the payment of such losses, liabilities or expenses) to equal the net return (computed on the same assumptions used by the Lessor in originally evaluating this transaction) that would have been available to the Lessor if the Lessor had not been required to pay such losses, liabilities or expenses.

The Lessee agrees to prepare and deliver to the Lessor and/or the Vendee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and/or the Vendee) any and all reports (other than income tax returns) to be filed by the Lessor and/or the Vendee with any federal, state or other regulatory authority by reason of the ownership by the Vendee or the Vendor of the Units, the interests of the Lessor in the Units or the leasing thereof to the Lessee or the Lessor, as the case may be.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for five days subject to Article 15(e) of the Security Documentation;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor, the Vendee or the Vendor to the Lessee (with copies thereof being provided by the party giving notice to the Lessor, the Vendee and the Vendor, as the case may be) specifying the default and demanding that the same be remedied;

D. any proceeding shall be commenced by or against



the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee hereunder including the filing by the Lessee of a petition in voluntary bankruptcy under any of the provisions of any bankruptcy law; or the consenting by the Lessee to the filing of any bankruptcy or reorganization petition against it under any such law; or the filing by the Lessee of a petition to reorganize the Lessee pursuant to the Bankruptcy Act or any other similar statute; or the making by the Lessee of an assignment for the benefit of creditors; or the admitting in writing by the Lessee of its inability to pay its debts generally as they become due; or the consenting by the Lessee to the appointment of a receiver, trustee, liquidator or other similar official of it or of any substantial part of its property, and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. an event of default set forth in Article 15 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder (subject to the Lessor's and Vendee's right to cure a default as set forth in Article 15(e) of the Security Documentation); or

F. an Event of Default shall have occurred under the Original Lease arising out of any default by the Lessee in performing any of its obligations hereunder;

then, in any such case, the Vendee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by

the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Vendee would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease and the Original Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Vendee, subject to the applicable provisions of law, may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee with respect to such action or inaction for any proceeds arising therefrom; but the Vendee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Vendee in its sole discretion, shall specify in such notice of termination: (x) a sum equal, with respect to each Unit, to (A) the excess, if any, of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Vendee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) an amount which, after deduction of all taxes required to be paid by the Beneficiary in

respect of all amounts payable by the Lessee to the Vendee hereunder, under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Beneficiary, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Beneficiary as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Vendee's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Beneficiary if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of Units as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Vendee by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit; any action or inaction by the Lessee or the sale or other disposition of the Vendee's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Beneficiary for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination specified for payment in such notice of termination over the amount the Vendee reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Vendee shall have sold any Unit, the Vendee, in lieu of collecting any amounts payable to the Vendee by the Lessee pursuant to the preceding clauses (x) and (y) of this subparagraph (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee shall pay to the Vendee and the Lessee shall pay to the Vendee on

the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination specified for payment in such notice of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Vendee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Vendee shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor or the Vendee to exercise the rights granted to it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Vendee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Vendee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such

Units upon such storage tracks of the Lessee or any of its affiliates as the Vendee reasonably may designate;

(b) permit the Vendee to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Vendee; and

(c) transport the same to any reasonable place, as directed by the Vendee.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Vendee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Vendee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of expiration of this Lease shall belong to the Vendee and, if received by the Lessee, shall be promptly turned over to the Vendee. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such expiration, the Lessee shall, in addition, pay to the Vendee for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Vendee on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Vendee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Vendee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no

obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor and the Vendee hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10, 11 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Vendor).

So long as the Lessee shall not be in default under this Lease and the Lessor is not in default under the Original Lease and the Lessor has not breached any of its obligations under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Vendee, the Lessor and the Vendor, which shall not be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, the Vendee or the Vendor or resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that this sentence shall not be deemed to prohibit any lien attaching to the leasehold interest of the Lessee under this Lease by reason of the existence of an after-acquired property clause in any existing or future mortgage to which the Lessee is a party covering substantially all of its property. The Lessee shall not, without the prior written consent of the Vendee and the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units in accordance with the terms hereof and to the use of the Units by it or by a railroad company or companies incorporated in the United States of America with which it has contractual arrangements for the use of the Units for its benefit upon trackage owned or operated by it or upon lines of railroad owned or operated by such railroad company or

companies or over which such railroad company or companies have trackage or other operating rights or over which railroad equipment of such railroad company or companies is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the operation and maintenance thereof outside the contiguous United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement the Sublease Consent or the Reassignment of Sublease Consent (as defined in the Participation Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that the net worth of the assignee or transferee shall not be less than the net worth of the Lessee, and provided further that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Purchase and Renewal Options. If this Lease has not been earlier terminated, the Lessee is not in default hereunder or under the Security Documentation and the Lessor is not in default under the Original Lease, the Lessee may, by written notice delivered to the Vendee not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional two-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond January 15, 1997, at a "Fair Market Rental Value" payable in semiannual payments on the semiannual anniversaries of the expiration of such original term,

or (b) to purchase all, but not fewer than all, the Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term; if the renewal option provided for in clause (a) is exercised, (i) all the other terms of this Lease shall be applicable during any extended term, except that the Casualty Values of the Units shall be calculated using the same assumptions used in calculating the Casualty Values for the original term of this Lease, taking into consideration the then Fair Market Value of the Units (both at the beginning and the end of the extended term), but in no event, however, shall such Casualty Values be less than 20% of the purchase price of the Units, and (ii) the Vendee or its successor in interest under the Original Lease shall become the lessor under this Lease for such extended term and the Lessee shall make its rental payments during such extended term at the principal office of the Vendee for the account of the Beneficiary or at such other place and/or to such other person as the Vendee may from time to time advise in writing. Any and all claims or disputes against Lessor or obligations of the Lessor of any kind arising out of or with respect to the initial term of this Lease or otherwise shall be made and/or resolved solely with Lessor, and Lessee shall have, claim or take no action, claim, dispute or set-off against Vendee by reason of or with respect thereto.

Fair Market Value and Fair Market Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's-length transaction between an informed and willing buyer-user or lessee (other than (i) a lessee currently in possession and (ii) a used equipment dealer), as the case may be, and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or lease, as the case may be, and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If, after 60 days from the giving of notice by the Lessee of its election to extend the term of this Lease or to purchase the Units, the Vendee and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental Value of the Units, as the case may be, such value shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appoint-



ing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value or Fair Market Rental Value, as the case may be, of the Units within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value or Fair Market Rental Value, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Value or Fair Market Rental Value, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value or Fair Market Rental Value, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

Upon payment of the purchase price of any Unit, the Vendee shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Vendee derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Vendee.

The Lessee hereby agrees that if the Units are acquired by the Lessor or PLM pursuant to § 13 of the Original Lease it shall not enter into any lease for such Units or purchase such Units directly or indirectly from the Lessor or PLM.

§ 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at the expense of the Lessor, at the request of the Vendee, deliver possession of such Unit to the Vendee upon such storage tracks as the Vendee may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Vendee to store such Unit on such tracks for a period not exceeding six months from the date of expiration of this Lease and transport the same, at any time within such six-month period, to any reasonable place, as directed by the Vendee, the movement and storage of such Units to be at the expense and risk of the Lessor. The Lessee agrees for the benefit of the Vendor and the Vendee to arrange for such movement and storage notwithstanding any failure of the Lessor to pay such expenses, and to seek reimbursement for such expenses only from the Lessor. If any Unit shall suffer a Casualty Occurrence as defined in § 7 hereof during such storage period, the Lessee shall pay to the Vendee the Casualty Value for such Unit as set forth in Schedule B hereto. All amounts earned in respect of the Units after the date of expiration of this Lease shall belong to the Vendee and, if received by the Lessee, shall be promptly turned over to the Vendee. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such expiration, the Lessee shall, in addition, pay to the Vendee for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Vendee on such Unit for each such day. During any such storage period the Lessee will permit the Vendee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Vendee or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Vendee pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or

other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Vendee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

§ 15. Recording. The Lessee, at the Lessor's expense, will cause this Lease, the Original Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and shall cause to be filed and recorded such financing statements and other documents as may be necessary to perfect the security interest of the Vendor in the Units, the Security Documentation, this Lease and the payments due and to become due hereunder in accordance with the laws of the States of California and Illinois and the Commonwealth of Kentucky. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Original Lease and Vendee under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all continuation statements and further instruments required by law or reasonably requested by the Vendee, the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Lessor's, the Vendor's and the Vendee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Original Lease, the Security Documentation and the assignment thereof to the Lessor, the Vendor; and the Lessee will promptly furnish to the Vendor and the Vendee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Vendee. This Lease, the Original Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Federal Income Taxes. It is the intent of the parties to the Lease that the Lease and the Original Lease be recognized as a lease for federal, state and local income tax purposes, that the Lease does not convey to the Lessee any right, title or interest in the Units except as

a lessee and that the Beneficiary, as the beneficial owner of the Units for Federal income tax purposes, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, (a) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code, employing the double-declining method of depreciation, and switching to the sum-of-the-years digits method when most beneficial to the Beneficiary utilizing the half-year convention as provided in Reg. Sec. 1.167 (a) 11(c)2(iii) and without taking into account the salvage value of the Units until the Units have been depreciated to a salvage value of zero (such zero salvage value being based upon an estimated gross salvage value of 10% of the Purchase Price of the Units which shall be reduced by 10% of the Purchase Price as provided in section 1.67(f) of the Code) (such deduction being herein called the ADR Deduction), (b) deductions with respect to interest payable under the Security Documentation pursuant to section 163 of the Code (such deduction being herein called the Interest Deduction), and (c) the 10% investment credit in 1975 (herein called the Investment Credit) with respect to the aggregate Purchase Price of the Units pursuant to section 38 and related sections of the Code.

For purposes of this § 16, the term "Beneficiary" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Beneficiary is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Beneficiary over the amount specified to be payable under this Lease or the Original Lease on the dates due hereunder, except as specifically provided in this Lease or the Original Lease, and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent

hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiary such records as will enable the Beneficiary to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Beneficiary becomes the beneficial owner of the Units for Federal income tax purposes, the Units will constitute "new section 38 property" within the meaning of section 48 of the Code and at the time the Beneficiary becomes the beneficial owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167 (c)(2) of the Code from commencing with the Beneficiary; (iii) at all times during the term of this Lease and the Original Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease and the Original Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) for Federal income tax purposes, all amounts includable in the gross income of the Beneficiary with respect to the Units and all deductions allowable to the Beneficiary with respect to the Units will be treated as derived from, or allocable to, sources within the United States; (v) the Beneficiary will be entitled to the ADR Deduction; (vi) the Beneficiary will be entitled to a 10% Investment Credit in 1975 with respect to the Purchase Price of the Units; (vii) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Beneficiary within 30 days after receipt of a written demand therefor.

If for any reason the Beneficiary shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to all or part of any Unit, or if for Federal income tax purposes any item of income, loss or deduction with respect to any Unit is treated as derived from, or allocable to, sources without the United States under the Code (any such loss, disallowance, recapture or treatment being hereinafter called a Loss), then the rent-

als for the Units set forth in § 3 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Vendee of such fact, be increased to such amount or amounts (and maintaining and with due regard for the differential in the rent paid by the Lessee under this Lease and the Lessor as lessee under the Original Lease) as shall, in the reasonable opinion of the Beneficiary, cause the Beneficiary's net return under the Original Lease to equal the net return that would have been realized by the Beneficiary under the Original Lease if such Loss had not occurred, and the Lessee shall forthwith pay to the Beneficiary as additional rental the amount of any interest and/or penalties which may be assessed by the United States of America against the Beneficiary attributable to such Loss; provided, however, that such rental rate shall not be so increased if the Beneficiary shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Vendee the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Vendee or the Beneficiary of any interest in such Unit or the voluntary reduction by the Vendee or the Beneficiary of its interest in the rentals from such Unit under the Lease (other than pursuant to the Assignment of this Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Beneficiary to claim in a timely manner the Investment Credit, the ADR Deduction or the Interest Deduction; or

(iv) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable.

In the event the rental rates shall be adjusted as hereinbefore provided in this § 16 the Casualty Values set forth in Schedule B hereto, the Termination Values set forth in Schedule C hereto and the damages and amounts set forth in subparagraph (b) of § 10 hereof shall be adjusted accordingly.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, in care of Professional Lease Management, Inc., One Embarcadero Center, Suite 2202, San Francisco, California 94111, Attention of President.

(b) if to the Lessee, at P. O. Box 354, Louisville, Kentucky 40201, Attention of Peter Ronald, Vice President and Treasurer, and

(c) if to the Vendee, at 231 South LaSalle Street, Chicago, Illinois, 60693, Attention of Corporate Trust Division,

or addressed to any party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Original Lease, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee, and no such variation shall be made without the written consent of the Vendor and the Vendee.


§ 20. Quiet Enjoyment. The Lessor covenants that if, and so long as, the Lessee keeps and performs each and every covenant, condition and agreement to be performed or observed by it hereunder, the Lessee shall have the right to quiet enjoyment of the Units leased hereunder without hindrance by the Lessor or any other person lawfully claiming the same by, through or under the Lessor.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment or reassignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.


IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

PLM-LOUISVILLE, INC.,

by   
President

[Corporate Seal]

Attest:

  
Secretary



LOUISVILLE GAS AND ELECTRIC COMPANY,

by

  
Vice President

[Corporate Seal]

Attest:

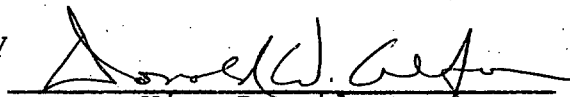
  
Assistant Secretary

Continental Illinois National Bank and Trust Company of Chicago, not in its individual capacity but solely as Trustee under a Trust Agreement dated as of the date hereof, hereby agrees and consents to the provisions of the foregoing Sublease of Railroad Equipment, including without limitation the provisions of the second paragraph of § 4 and the first paragraph of § 13.

Dated as of October 31, 1975

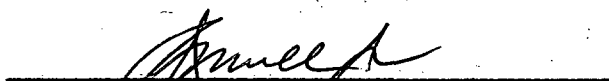
CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Trustee under a Trust Agreement dated as of the date hereof,

by

  
Vice President


[Corporate Seal]

Attest:

  
Trust Officer

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK , )

On this 16<sup>th</sup> day of December 1975, before me personally appeared DONALD W. ALVIN, to me personally known, who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires April 26, 1976

STATE OF CALIFORNIA , )  
 ) ss.:  
COUNTY OF SAN FRANCISCO, )

On this 15th day of September, 1975, before me personally appeared Mark C. Hungerford, to me personally known, who, being by me duly sworn says that he is President of PLM-LOUISVILLE, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



555 California St., 34th Fl., San Francisco, CA. 94104  
[Notarial Seal]

Edith Moerbe  
Notary Public

My Commission expires 3/13/78

COMMONWEALTH OF KENTUCKY, )  
 ) ss.:  
COUNTY OF JEFFERSON, )

On this *18<sup>th</sup>* day of *December* 1975, before me personally appeared *Peter Ronald*, to me personally known, who, being by me duly sworn says that he is *Vice President* of LOUISVILLE GAS AND ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Linda C. Parrish*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires *March 30, 1979.*

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
100-ton open top hopper car	75	PLMX-1466 to 1540

# SCHEDULE B TO SUBLEASE

<u>Date</u>	<u>Casualty Value Percentage</u>
January 15, 1976	88.39
July 15, 1976	89.36
January 15, 1977	89.98
July 15, 1977	90.30
January 15, 1978	90.31
July 15, 1978	90.04
January 15, 1979	89.47
July 15, 1979	88.64
January 15, 1980	87.52
July 15, 1980	86.15
January 15, 1981	84.52
July 15, 1981	82.65
January 15, 1982	80.54
July 15, 1982	78.20
January 15, 1983	75.66
July 15, 1983	72.92
January 15, 1984	70.06
July 15, 1984	67.13
January 15, 1985	64.17
July 15, 1985	61.15
January 15, 1986	58.09
July 15, 1986	54.97
January 15, 1987	51.81
July 15, 1987	48.59
January 15, 1988	45.34
July 15, 1988	42.02
January 15, 1989	38.68
July 15, 1989	35.27
January 15, 1990	31.84
July 15, 1990	28.34
January 15, 1991, and thereafter	25.00

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the Casualty Value of any Unit Suffering a Casualty Occurrence on or before the third, fifth and seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below.

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	20.00
Fifth	13.34
Seventh	6.67

#### SCHEDULE C TO SUBLEASE

<u>Date</u>	<u>Termination Value Percentage</u>
July 15, 1983	66.84
January 15, 1984	63.91
July 15, 1984	60.90
January 15, 1985	57.85
July 15, 1985	54.73
January 15, 1986	51.57
July 15, 1986	48.34
January 15, 1987	45.07
July 15, 1987	41.73
January 15, 1988	38.35
July 15, 1988	34.89
January 15, 1989	31.40
July 15, 1989	27.83
January 15, 1990	24.22
July 15, 1990	20.54
January 15, 1991, and thereafter	.00